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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

**In re the Marriage of DON L. and JOAN
M. RAFFO.**

DON L. RAFFO,

Plaintiff and Appellant,

v.

JOAN M. RAFFO,

Defendant and Respondent.

A137977/A138025

**(San Mateo County
Super. Ct. No. FAM098570)**

Appellant Don L. Raffo appeals from various trial court orders pertaining to child support following the dissolution of his marriage to Joan M. Raffo.¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Don and Joan married in 1989 and had three children. Don petitioned for dissolution in 2008. The San Mateo Department of Child Support Services (Department) intervened in the action as permitted by Family Code section 17404 and obtained a judgment in the dissolution action requiring Don to pay Joan monthly child support of \$2,453 beginning in August 2009.

¹ We refer to the parties and their children by their first names for convenience and clarity. (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 390, fn. 1.)

In late 2009, Don filed for bankruptcy protection and later moved to modify the child support order. Joan also filed for bankruptcy. In a settlement with the bankruptcy trustee, Joan received \$53,717.80 from the bankruptcy estate in full satisfaction of Don's domestic support obligations incurred through June 30, 2011.

On June 20, 2012, Don and Joan stipulated to reduce Don's child support to \$807 per month beginning January 1, 2012. In addition, the stipulation provided Don would reimburse Joan \$2,300 for the children's medical expenses commencing June 1, 2012. The stipulation further reflected Don's disagreement with the calculation of his "fiscal situation" and limited the use of the financial data to "this one time situation[.]" Finally, the stipulation set a December 4, 2012 hearing date to review child support.

Don fell behind in his child support payments and in September 2012, the Department served Charles Schwab & Co., Inc. (Schwab) with a notice to withhold (or levy) \$17,038.74 from Don's account. The amount was later reduced to \$8,991.79. Schwab sent a notice of the levy to Don, who submitted a claim of exemption. The court denied the exemption claim. Don submitted a second claim of exemption, the Department opposed it, and the court denied the exemption claim following a hearing on November 29, 2012. The court determined the exemption claim was "not properly before the Court" and that the "financial institution was properly noticed." The court also concluded, "[t]here's nothing that was pled other than [Don] doesn't want [Joan] to get the money, that it has nothing to do with the children, that she wants the money for herself." Pursuant to the parties' agreement, the court ordered "no funds shall be distributed prior to [the] hearing on 12-4-12."² The court continued the December 2012 hearing to January 17, 2013, after Don moved to disqualify the commissioner pursuant to Code of Civil Procedure section 170.6.

² An order filed on November 30, 2012 provided, "[t]he Department's request to disburse the levied funds is granted." The order was later amended to indicate "[t]he Department's request to disburse the levied funds to the Custodial Party after the results of the 12/4/12 hearing is granted."

Before the January 17, 2013 hearing, Don filed an updated income and expense declaration. He also filed several motions, including: (1) a petition for writ of *coram nobis* to order the Department to “[r]ecompute” child support based on extrinsic fraud; (2) a motion to force Joan to account for how she spent the child support she had received; and (3) a motion for summary adjudication pursuant to Family Code section 3691³ “on the issue of extrinsic fraud and order for recalculation of child support based on departmental misconduct.” Joan filed a motion seeking reimbursement of medical expenses incurred on behalf of the children and the Department requested authorization to disburse the funds levied from Don’s Schwab account.

Following the January 17, 2013 hearing where Joan testified about the children’s medical expenses, the court granted Joan’s reimbursement motion and ordered Don to “pay the sum total of \$448.37 for unreimbursed medical expenses for the period” of July 1, 2011 through October 29, 2012. The court also granted the Department’s request to disburse the “levied funds to the Custodial Party” after the hearing. The court denied Don’s motions. It denied his *coram nobis* petition and his motion for summary adjudication, concluding “there is no fraud. There was a signed stipulation and, in fact, to the point where Mr. Raffo added conditions on that stipulation. He knew exactly what that stipulation was. There was no fraud. . . . So the Court is finding no fraud under . . . Section 3[69]1 nor based on writ of *coram nobis*.” The court also denied Don’s motion for an accounting of fund expenditures. Pursuant to the parties’ agreement, the court continued the review of child support hearing to May 2013 to allow Don to provide information verifying his income. An order reflecting the court’s rulings at the January 17, 2013 hearing was filed on February 27, 2013.⁴

Don appealed from the orders: (1) denying his claim of exemption and authorizing the release and disbursement of \$8,991.79 from his Schwab account; (2) granting Joan’s motion for reimbursement of \$448.37 for the children’s medical expenses; (3) denying

³ Unless otherwise noted, all further statutory references are to the Family Code.

⁴ The February 27, 2013 order indicates Don withdrew the summary adjudication motion.

his motion for an accounting of fund expenditures; (4) denying his summary adjudication motion; and (5) continuing the review of child support to May 2013.⁵ We granted Don's unopposed motion to consolidate the two appeals (A137977 & A138025). We deny Don's request for judicial notice of a federal statute and of various documents from his bankruptcy proceeding because they are not relevant to a material issue. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2.)

DISCUSSION

Don argues: (1) the trial court must recalculate child support payable to Joan; (2) the order withholding \$8,991.79 from his Schwab account "constitutes a confiscatory taking" without due process and the Department violated Code of Civil Procedure section 703.160 by selling assets in his Schwab account; (3) the order reimbursing Joan for \$448.37 in medical expenses violates the "Full Faith and Credit Clause of the United States Constitution[;]" and (4) the Department's attorney committed misconduct and conspired with the court to deny him due process.

I.

The Court Properly Denied Don's Motions to Set Aside the Monthly Child Support Calculation of \$807

Don contends the court must recalculate child support based on "California's extrinsic fraud doctrine." He seems to suggest the court erred by denying his motion for summary adjudication regarding extrinsic fraud and his *coram nobis* petition. As he did in the trial court, Don claims the Department's attorney was not qualified to calculate child support, resulting in a higher child support order in the parties' June 20, 2012 stipulation. Don claims his unwitting reliance on the Department's attorney's calculations induced him to enter the stipulation and "prevented him from participating in [a] hearing" on child support.

⁵ Don petitioned for writ of mandate/prohibition challenging the order continuing the child support matter to May 2013 and ordering the release and disbursement of \$8,991.79 in his Schwab account (A137695). This court denied the petition.

The trial court was not persuaded by this argument and neither are we. The trial court properly denied Don’s motion for summary adjudication on extrinsic fraud under section 3691. (*In re Marriage of Zimmerman* (2010) 183 Cal.App.4th 900, 906-907 (*Zimmerman*) [affirming denial of motion to set aside child support order based on alleged fraud].) “Section 3691 allows the trial court to set aside the order where one party has committed perjury or ‘fraudulently prevented’ the other party ‘from fully participating in the proceeding’ to determine support. (See § 3691, subds. (a) & (b).)” (*In re Marriage of Tavares* (2007) 151 Cal.App.4th 620, 626-627.) Here, Don was unable to demonstrate he was prevented from “fully participating in the proceeding[s].” (§ 3691, subd. (a).) As the trial court recognized, Don knowingly and voluntarily entered into the stipulation, and he and his attorney signed it. In addition, Don authored the provision disputing the calculation of his income and insisted it be added to the stipulation. That Don later retained an expert who concluded the child support calculations in the June 20, 2012 stipulation were “arbitrary” does not alter our conclusion. Don has not — and cannot — demonstrate he was prevented from fully participating in the proceedings and, as a result, the court properly denied his summary adjudication motion on the grounds of extrinsic fraud. (See *Zimmerman, supra*, 183 Cal.App.4th at p. 914 [alleged fraud did not deny mother an adversary hearing on the merits].)

In addition, the court properly denied Don’s *coram nobis* petition. “[U]sed almost exclusively to attack judgments in criminal cases[,]’ the purpose of the writ of *coram nobis* “‘is to secure relief, where no other remedy exists, from a judgment rendered while there existed some fact which would have prevented its rendition if the trial court had known it and which, through no negligence or fault of the defendant, was not then known to the court.’” (*People v. Kim* (2009) 45 Cal.4th 1078, 1091 & fn. 9, citations omitted (*Kim*), quoting *People v. Adamson* (1949) 34 Cal.2d 320, 326-327.) Don was not entitled to *coram nobis* relief because he had an adequate legal remedy. (*Id.* at p. 1093 [“the writ of error *coram nobis* is unavailable when a litigant has some other remedy at law”]; see also *People v. Price* (1958) 162 Cal.App.2d 196, 197.) Moreover,

coram nobis relief is granted only where the petitioner satisfies three elements, including where ““some fact existed which, without any fault or negligence on his part, was not presented to the court at the trial on the merits, and which if presented would have prevented the rendition of the judgment.”” (*Kim, supra*, 45 Cal.4th at p. 1093, quoting *People v. Shipman* (1965) 62 Cal.2d 226, 230.) Here, the amount of Don’s income was addressed by the trial court on the merits. For these reasons, the court did not abuse its discretion by denying Don’s *coram nobis* petition.

II.

Don’s Claims Regarding the Levy on His Schwab Account Have No Merit

Don raises two claims regarding the levy of funds in his Schwab account. First, he argues the order withholding \$8,991.79 constitutes a “confiscatory taking” without due process. Second, he contends the Department violated Code of Civil Procedure section 703.160 by “selling the property” to which he claimed an exemption. Neither argument has merit.

“The State of California has devised a system of ensuring automatic payment of child support arrears by means of levying on support obligors’ assets in financial institution accounts. Under the Financial Institution Data Match (FIDM) system, the State DCSS provides financial institutions with the State DCSS’s files of delinquent support obligors. The financial institutions are required to determine if there is a match with their own account holders. Upon receiving a notice or order to withhold issued by the State DCSS, financial institutions are required to notify the obligor of the notice or order, and withhold from the obligor’s accounts the amount of support arrears stated in the notice or order. (§§ 17453, 17454.)” (*In re Marriage of LaMoure* (2011) 198 Cal.App.4th 807, 815 (*LaMoure*).)

“Before the funds are transmitted to the State DCSS, the obligor may file with the local DCSS a claim of exemption based on financial hardship. (§ 17453, subd. (j)(3).) Subdivision (j)(3) of section 17453 provides that, ‘If any of the conditions set forth in paragraph [(j)](1) exist, an obligor may apply for a claim of exemption . . . for an amount

that is less than or equal to the total amount levied. The sole basis for a claim of exemption under this subdivision shall be the financial hardship for the obligor and the obligor's dependents.' (§ 17453, subd. (j)(3).)" [¶] "The superior court in the county in which the local child support agency enforcing the support obligation is located shall have jurisdiction to determine the amount of exemption to be allowed. The court shall consider the needs of the obligor, the obligee, and all persons the obligor is required to support, and all other relevant circumstances in determining whether to allow any exemption pursuant to this subdivision. The court shall give effect to its determination by an order specifying the extent to which the amount levied is exempt.' (§ 17453, subd. (j)(7).)" (*LaMoure, supra*, 198 Cal.App.4th at pp. 815-816.) We review the denial of a claim of exemption for abuse of discretion. (*Id.* at pp. 820, 829.)

Here, Don received sufficient notice before the funds were levied because Schwab sent Don the notice of withholding order and Don filed a claim of exemption. As a result, we reject Don's due process challenge based on deficient notice. We also conclude the court did not abuse its discretion by concluding Don was not entitled to a hardship exemption. (*LaMoure, supra*, 198 Cal.App.4th at pp. 828-829.) In denying the claim of a hardship exemption, the trial court explained, "[t]here's nothing that was pled other than [Don] doesn't want [Joan] to get the money. . . ." On appeal, Don has not demonstrated this conclusion "'exceeded the bounds of reason' or . . . that no judge would reasonably make the same order under the same circumstances." [Citations.]" (*Id.* at p. 829, quoting *In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 480.)

Don is mistaken that the Department violated Code of Civil Procedure section 703.160 by "selling the property" to which he claimed an exemption. That statute provides, "Except as otherwise provided by statute or ordered by the court, the levying officer shall not release, sell, or otherwise dispose of the property for which an exemption is claimed until an appeal is waived, the time to file an appeal has expired, or the exemption is finally determined." (Code Civ. Proc., § 703.610, subd. (a).) The order authorizing the Department to disburse the funds in Don's Schwab account was proper under Code of Civil Procedure section 703.610, subdivision (b), which expressly

authorizes the trial court on its own motion — and while exemption proceedings are pending — to “make any orders for disposition of the property that may be proper under the circumstances of the case.” (See also Witkin, Cal. Procedure (5th ed. 2008) Enforcement of Judgment, § 186, p. 221.) Here, the trial court initially directed the Department to hold the disputed funds from the Schwab account until the December 4, 2012 hearing. The court held a hearing on Don’s claim of exemption on November 29, 2012. Then, after the January 17, 2013 hearing — and after this court denied Don’s writ petition challenging the order authorizing the Department to disburse the funds — the trial court allowed that hold to expire. The record before the trial court was sufficient to support its implied conclusion that authorizing the Department to disburse the levied funds was proper under the circumstances of the case.

III.

Substantial Evidence Supports the Reimbursement Order

We reject Don’s claim that the order requiring him to reimburse Joan \$448.71 for the children’s medical expenses violates the “Full Faith and Credit Clause of the United States Constitution.” We similarly reject his claim, raised primarily in his reply brief and during oral argument, that the “federal settlement agreement wiped out the amount on which the \$448.37 is based.” Don does not acknowledge the substantial evidence standard of review. In addition, he fails to discuss the evidence supporting the order and explain why it is insufficient. As a result, he has failed to demonstrate error. (*Bell v. H.F. Cox, Inc.* (2012) 209 Cal.App.4th 62, 80; *Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1304-1305.) In any event, we conclude substantial evidence supports the reimbursement order. Pursuant to the bankruptcy settlement, Joan received a sum of money from Don in full satisfaction of his domestic support obligations through June 30, 2011. Joan then filed a motion for reimbursement for the children’s medical expenses. At the January 17, 2013 hearing, Joan testified that \$448.37 in medical expenses for the children had been incurred *after* June 30, 2011. As a result, substantial evidence supports the order requiring Don to reimburse Joan \$448.37

for medical expenses incurred from July 1, 2011 through October 2012, the date of Joan's motion.

IV.

Don's "Misconduct" and "Conspiracy" Claims Fail

Don claims the Department committed misconduct and conspired with the court to prepare and approve the November 30, 2012 order authorizing the disbursement of funds levied from his Schwab account. He also contends the Department and the commissioner "actively conspired to create a fraudulent record and Order to cover up the unlawful taking of [his] assets." According to Don, recusal of the commissioner, the Department, and the Department's attorney "is necessary."

There are several problems with Don's arguments. First, the November 30, 2012 order was amended to correctly state no funds would be disbursed until after the December 4, 2012 hearing (later continued to Jan. 17, 2013). Second, there is no evidence in the record of misconduct or a conspiracy to violate Don's due process rights. Finally, Don has failed to cite any authority authorizing the recusal of the commissioner or the Department from further proceedings in this case. (*Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007, fn. omitted [failure to support contention with authority "constitutes a waiver of the issue on appeal"].)

DISPOSITION

The court's November 29, 2012, January 17, 2013, February 20, 2013, and February 27, 2013 orders are affirmed. Joan is entitled to costs on appeal.

Jones, P.J.

We concur:

Simons, J.

Bruiniers, J.